IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

AS.No. 399 of 1998()

OS.269/1995 of PRL.S.C.,THALASSERY
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APPELLANT - 1ST DEFENDANT:

PULLANHIODAN ARAVINDAN, RESIDING AT PAZHAYA VEEDU, CHITTIPPARAMBU P.O., KANNUR.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENT - PLAINTIFF:

KOZHUKUNNON KUNHIRAMAN NAMBIAR, SON OF GOVINDA KURUP, KANNAVAN AMSOM, VATTOLY, THALASSERY, P.O. CHITTARIPARAMBU.

BY ADV. SRI.K.V.SOHAN
SRI.K.RAJEEV

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 399 OF 1998

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Dated this the 2nd day of July, 2007

J U D G M E N T

First defendant in O.S. No.269 of 1995 on the file of the Sub Court, Thalassery is the appellant. Appeal is filed against the decree and judgment passed by the court below by which the appellant was directed to pay an amount of Rs.10,000/- as damages to the plaintiff, who is none other than appellant's paternal uncle.

2. Respondent filed the suit claiming damages. It was averred that first respondent and late Shri Kunhappa Nambiar were brothers. Appellants and other defendants in the suit are the legal heirs of Kunhappa Nambiar. It was averred that there was property disputes between the plaintiff and defendants. It was averred that during the month of July, 1994 plaintiff cut two teak trees stood in his property for using the same in the construction of a house. On 22.8.1994 appellant filed a false complaint against the plaintiff before the Forest Range Officer, Kottiyoor alleging that plaintiff had cut and removed two teak trees stood in the vested forest.

Forest officials seized the timber logs and registered a case, O.R. No.48 of 1994, against the plaintiff. In the meanwhile appellant also field a complaint before the Kuthupuaramba police station alleging that the plaintiff cut and removed two teak trees stood on the boundary of his property. Plaintiff was called to the police station and detained there and later released. It was further averred that the plaintiff filed a petition before the Forest Officials for releasing the timber logs which was objected to by the appellant and finally Forest Officials released the timber logs to the plaintiff. It was averred that due to the delay in releasing the timber logs damages were caused to the timber logs. It was averred that the plaintiff was looked down by the members of the Society who were under the impression that the timber logs were stolen properties. So the plaintiff claimed damages being the value of the timber logs, for mental agony, for loss of reputation and the amount spent for releasing the timber logs etc.

3. Appellant and other defendants filed a joint written statement. It was contended that the appellant did not file any complaint as alleged. It was contended that on 22.8.1994

appellant found teak timber logs lying on the side of a river. It was contended that the appellant was under a bona fide belief that those timber logs were stolen from the vested forest and reported the matter to the Forest Officials. It was contended that appellant had no role regarding the action taken by the Forest Officials. Quantum of damages claimed was disputed. The averment that the plaintiff was looked down by the members of the Society was also disputed. Hence he prayed for dismissal of the suit.

4. Trial court awarded a sum of Rs.10,000/- which includes Rs.1,000/- for causing defamation to the plaintiff, Rs.3,000/- for loss sustained by the plaintiff for getting the timber logs released and Rs.6,000/- for damages sustained to the timber logs. Challenging that decree and judgment, this appeal is filed.

5. Exhibit X1 is the file relating to the complaint filed by the appellant. It is true that in the complaint the appellant had only stated that he found timber logs in a suspicious circumstance and the same might have been cut and removed from the vested forest. It is an admitted fact that those timber logs were seized by the Forest Officials under

O.R.No.48 of 1994 and a case was registered against the plaintiff. According to the plaintiff teak trees stood in his property and those trees were cut and removed to be used for construction of his house and the appellant and his henchmen removed the timber logs and filed a false complaint against him. Exhibit Xa is the complaint filed by the appellant. Though Exhibit Xa alone may not be sufficient, Exhibit Xb letter written by him shows that the appellant filed a petition with mala fide intention. Though in Exhibit Xa complaint the allegation was that the appellant found certain timber logs on the side of a river, in Exhibit Xb he changed his version and asserted that those trees were standing in his property and plaintiff cut and removed the same. Appellant as P.W.1 had admitted that the property of the plaintiff is visible from his property. He had also deposed that he was supplying milk to the Forest Range Officials. So the evidence on record shows that appellant set criminal law into motion against the plaintiff without any reasonable and probable case.

6. In Sudhakaran v. Padmanabhan (1986 KLT 669) this Court considered the ingredients to be established in a

suit for malicious prosecution. In Chamini v. Valayanthat Tharayil Chirutha (1970 KLJ 1023) it was held that the proof of assertion rests with the plaintiff. In this case plaintiff had discharged of his burden. The evidence adduced in this case shows that he was fully aware that the allegations levelled against the respondent was not true and falsely implicated his own paternal uncle, who was 70 at the time of filing of the complaint. The trial court, after considering all aspects of the matter, found that the plaintiff was entitled to get Rs.10,000/- as damages under different heads. That is a finding of fact based on good evidence. I do not find any reason to interfere with that finding. The appeal is without any merit and the same is only to be dismissed.

7. In the result, the appeal is dismissed. Parties are directed to bear their respective costs.

Civil Miscellaneous Petition No.4961 of 2000 will stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S. NO. 399 OF 1998

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J U D G M E N T

2ND JULY, 2007